

**OPINION
74-182**

July 23, 1974 (OPINION)

Mr. Robert L. Eckert

State's Attorney

Richland County

Wahpeton, ND 58705

Dear Mr. Eckert:

This is in response to your letter of June 26, 1974, wherein you request an opinion of this office relative to section 11-33-11 of the North Dakota Century Code. You state that the request for opinion is based upon inquiry received by you from Mark Beardsley, Assistant Planner for Lake Agassiz R. C. and D. His letter of inquiry to you provides as follows:

"I am writing for a legal opinion concerning county zoning. Should a county enact zoning regulations under chapter 11-33, are there alternative ways of setting up a Board of Adjustment for its enforcement, as set up under 11-33-11? This section allows the Board of County Commissioners to adjust the application and enforcement of an ordinance that would result in an "unnecessary hardship" or "injustice", but does not specifically allow for a Board of Adjustment as described for municipalities in 40-47-07.

"My question then is can the County Commissioners delegate this authority of adjustment to Board of Adjustment specifically set up for this purpose? If this is possible, would this board be required to take the same form, size, authority, etc., as delegated to Municipal Boards of Adjustments as outlined in sections 40-47-07, 40-47-08, 40-47-09, 40-47-10, 40-47-11 of the North Dakota Century Code? Or, is it possible for the Board of County Commissioners to set the size and other criteria of the Board of Adjustment to meet their own specifications and needs?

"This last question, if affirmative, would add a great deal of flexibility to County Zoning that is truly needed to bridge the gap between the traditional county and township zoning question. If used correctly, the County Board of Adjustment could become the catalyst needed for intergovernmental cooperation that in the past has not existed between these two units in regard to zoning matters."

We would initially note the provisions of section 11-33-11 of the North Dakota Century Code, as follows:

"11-33-11. May adjust enforcement. The board of county commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder in any

specific case where a literal enforcement of such provision would result in great practical difficulties, unnecessary hardship, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the general purposes thereof." (emphasis supplied)

Section 11-33-11 as immediately hereinbefore quoted, relates specifically to the county commissioners. We are not aware of any statute which would authorize the appointment of a board of adjustment by county commissioners nor to otherwise delegate their powers and duties to any other board, person or entity. Sections 40-47-07, 40-47-08, 40-47-09, 40-47-10, and 40-47-11 of the North Dakota Century Code relate to cities and the governing bodies thereof. We do not believe that provisions relating to city government have any application to the powers and duties of county commissioners or county government other than the exercise of joint powers as provided by law. In fact, chapter 11-33 of the North Dakota Century Code specifically charges the county commissioners with the duties contemplated by your letter of inquiry as the same relates to county zoning

Accordingly, we are of the opinion that the board of county commissioners does not have the authority to set up or appoint a board of adjustment but is rather itself responsible for the adjustment or carrying out the intent of section 11-33-11 of the North Dakota Century Code. In absence of statutory authority granting the board of county commissioners the power to so appoint or delegate authority, the same must rest with the county commissioners.

It appearing that the board cannot so do, the remaining questions in your letter would not have any consequence.

We trust the foregoing will adequately express the opinion of this office upon the matter submitted for consideration.

Sincerely,

ALLEN I. OLSON

Attorney General